

**SETTLEMENT AGREEMENT BETWEEN THE MISSOURI  
STATE BOARD OF REGISTRATION FOR THE HEALING ARTS  
AND MICHAEL S. INSLER, M.D.**

Come now Michael S. Insler, M.D. (Licensee) and the State Board of Registration for the Healing Arts (the "Board") and enter into this Agreement for the purpose of resolving the question of whether Licensee's license as a physician or surgeon will be subject to discipline. The Licensee and the Board jointly stipulate and agree that a final disposition of this matter may be effectuated as described below pursuant to § 621.045, RSMo.

1. Licensee acknowledges that he understands the various rights and privileges afforded him by law, including the right to a hearing of the charges against him; the right to appear and be represented by legal counsel; the right to have all charges against him proven upon the record by competent and substantial evidence; the right to cross-examine any witnesses appearing at the hearing against him; the right to present evidence on his own behalf at the hearing; the right to a decision upon the record by a fair and impartial administrative hearing commissioner concerning the charges pending against him and, subsequently, the right to a disciplinary hearing before the Board at which time he may present evidence in mitigation of discipline; and the right to recover attorney's fees incurred in defending this action against his license. Being aware of these rights provided him by operation of law, Licensee knowingly and voluntarily waives each and every one of these rights and freely enters into this Settlement Agreement and agrees to abide by the terms of this document, as they pertain to him.

2. Licensee acknowledges that he may, at the time this Agreement is effective or within fifteen days thereafter, submit this Agreement to the Administrative Hearing Commission for determination that the facts agreed to by the parties constitutes grounds for discipline of Licensee's license.

3. Licensee acknowledges that he has been informed of his right to consult legal counsel in this matter.

4. The parties stipulate and agree that the disciplinary order agreed to by the Board and Licensee in Part III herein is based only on the Agreement set out in Parts I and II herein. Licensee understands that the Board may take further disciplinary action against Licensee based on facts or conduct not specifically mentioned in this document that are either now known to the Board or may be discovered.

5. Licensee understands and agrees that the Board will maintain this Agreement as an open record of the Board as required by Chapters 334, 610, 620 and 621, RSMo 2008, as amended.

#### **I. JOINT STIPULATION OF FACTS**

Based on the foregoing, the Board and Licensee herein jointly stipulate to the following:

6. The State Board of Registration for the Healing Arts is an agency of the State of Missouri created and established pursuant to §334.120, for the purpose of executing and enforcing the provisions of Chapter 334, RSMo.

7. The Licensee is licensed by the Board as a physician and surgeon. License Number 2005000577. This license was first issued on January 11, 2005. Licensee's license is current, and was current and active at all times relevant herein.

8. On or about December 21, 2009 Licensee signed and submitted a licensure renewal application for the February 1, 2010 through January 31, 2011 renewal period to the State Board of Registration for the Healing Arts. The renewal form included information that indicated that disciplinary action was taken against his license by the Florida Department of Health.

9. The disciplinary action taken by originated from Licensee performing or attempting to perform health care services on the wrong patient, a wrong-site procedure, or a wrong procedure on patient T.W. in July 2005.

10. On or about July 5, 2005. Patient T.W., a then thirty-two (32) year- old male, presented to The Lasik Vision Institute in Tampa, Florida for a pre-operative examination for Photo Refractive Keratotomy ("PRK").

11. PRK is a laser eye procedure intended to correct a person's vision, reducing dependency on glasses or contact lenses.

12. On or about July 5, 2005, a physician at The Lasik Vision Institute measured T.W.'s right eye and determined T.W.'s right eye glass prescription was -1 -0.75 x 10. The physician also measured T.W.'s left eye and determined the left eye glass prescription was -1.75 -0.25 x 35.

13. On or about July 28, 2005, T.W. signed an informed consent for Licensee to perform PRK.

14. On or about July 29, 2005, T.W. presented to The Lasik Vision Institute for PRK.

15. On or about July 29, 2005, Licensee planned to treat T.W.'s right eye for -0.75 - .04 x 8 and planned to treat T.W.'s left eye for -0.75 -0.4 x 28.

16. On or about July 29, 2005, at approximately 4:12 p.m., Licensee treated T.W.'s right eye for -7.50 -0.4 x 4. The VISX laser printout from this treatment was excluded from T.W.'s file until on or about September 14, 2005.

17. Licensee failed to verbally confirm the intended procedure and/or record when the confirmation was completed and which personnel on the surgical team confirmed each item.

18. At approximately 4:20 p.m., Licensee treated T.W.'s left eye for -0.82 -0.4 x 28. The VISX laser printout from this treatment was immediately placed in T.W.'s file.

19. At approximately 4:25 p.m., Licensee ran the laser as if treatment was being completed on T.W.'s right eye for -0.75 -0.4 x 8. The VISX laser printout for this treatment was immediately placed in T.W.'s file.

20. On or about September 14, 2005, Licensee met with Dr. R.G. about the overcorrection of T.W.'s vision. Licensee indicated that a technician incorrectly programmed the VISX machine. Licensee produced a crumpled copy of the VISX printout from the first treatment on T.W.'s right eye for -7.50 -0.4 x 4.

21. Based on the above conduct, Licensee entered into a settlement agreement with the State of Florida Board of Medicine on or about October 28, 2009.

22. The settlement agreement provided that Licensee's license would be reprimanded, Licensee would pay \$30,000 in administrative fines, licensee would reimburse costs of \$3787.69, licensee would complete a medical ethics course within eighteen (18) months of the filing of the settlement agreement, Licensee would perform 250 hours of community service within two (2) years of the filing of the settlement agreement, Licensee would complete five (5) hours of CME within one (1) year of the filing of the settlement agreement, and Licensee would present a seminar on Wrong Site Surgeries within six months of the filing of the settlement agreement.

## **II. JOINT CONCLUSIONS OF LAW**

23. Cause exists to discipline Licensee's license pursuant to Section 334.100.2 (4)(a), (5), (8), RSMo, which states:

2. The board may cause a complaint to be filed with the administrative hearing commission as provided by chapter 621, RSMo, against any holder of any certificate of registration or authority, permit or license required by this chapter or any person who has failed to renew or has surrendered the person's certificate of

registration or authority, permit or license for any one or any combination of the following causes:

(4) Misconduct, fraud, misrepresentation, dishonesty, unethical conduct or unprofessional conduct in the performance of the functions or duties of any profession licensed or regulated by this chapter, including, but not limited to, the following:

(a) Obtaining or attempting to obtain any fee, charge, tuition or other compensation by fraud, deception or misrepresentation; willfully and continually overcharging or overtreating patients; or charging for visits to the physician's office which did not occur unless the services were contracted for in advance, or for services which were not rendered or documented in the patient's records;

....

(5) Any conduct or practice which is or might be harmful or dangerous to the mental or physical health of a patient or the public; or incompetency, gross negligence or repeated negligence in the performance of the functions or duties of any profession licensed or regulated by this chapter. For the purposes of this subdivision, "repeated negligence" means the failure, on more than one occasion, to use that degree of skill and learning ordinarily used under the same or similar circumstances by the member of the applicant's or licensee's profession;

....

(8) Revocation, suspension, restriction, modification, limitation, reprimand, warning, censure, probation or other final disciplinary action against the holder of or applicant for a license or other right to practice any profession regulated by this chapter by another state, territory, federal agency or country, whether or not voluntarily agreed to by the licensee or applicant, including, but not limited to, the denial of licensure, surrender of the license, allowing the license to expire or lapse, or discontinuing or limiting the practice of medicine while subject to an investigation or while actually under investigation by any licensing authority, medical facility, branch of the armed forces of the United States of America, insurance company, court, agency of the state or federal government, or employer;

24. The Licensee's conduct, as established by the foregoing facts, falls within the intendments of §334.100.2 (4)(a), (5), (8), RSMo.

25. Cause exists for the Board to take disciplinary action against the Licensee's license under §334.100.2, RSMo.

### **III. JOINT AGREEMENT ON DISCIPLINE**

Based on the foregoing, the parties mutually agree and stipulate that the following shall constitute the disciplinary order entered by the Board in this matter under the authority of §621.110 RSMo 2008. This agreement, including the disciplinary order, will be effective immediately on the date entered and finalized by the Board. The following are the terms of the disciplinary order:

26. License number 2005000577 issued by the Board to the Licensee is hereby PUBLICLY REPRIMANDED.

27. Licensee shall comply with all terms set forth in the above-referenced settlement agreement with the State of Florida Board of Medicine.

28. If the Licensee is licensed in other jurisdictions, then he shall notify, in writing, the medical licensing authorities of those jurisdictions, within fifteen (15) days of the effective date of this settlement agreement, of the Licensee's disciplinary status in Missouri. The Licensee shall forward a copy of this written notice to the Board contemporaneously with sending it to the relevant licensing authority.

29. For purposes of this agreement, unless otherwise specified in this agreement, all reports, documentation, evaluations, notices, or other materials required to be submitted to the Board in this agreement shall be forwarded to The State Board of Registration for the Healing Arts, Attention: Investigations, P.O. Box 4, 3605 Missouri Blvd., Jefferson City, Missouri 65102.

30. In the event the Board determines that the Licensee has violated a term or condition of the disciplinary period which violation would also be actionable in a proceeding before the Administrative Hearing Commission or in the circuit court, the Board may elect to pursue any lawful remedies afforded it and is not bound by this Agreement in its election of remedies concerning that violation.


31. No additional order shall be entered by this Board pursuant to the preceding paragraph of this agreement without notice and an opportunity for hearing before this Board as a contested case in accordance with the provisions of Chapter 536, RSMo. If any alleged violation of this agreement occurred during the disciplinary period, the parties agree that the Board may choose to conduct a hearing before it either during the disciplinary period, or as soon thereafter as a hearing can be held, to determine whether a violation occurred and, if so, may impose further disciplinary action. The Licensee agrees and stipulates that the Board has continuing jurisdiction to hold a hearing to determine if a violation of this agreement has occurred.

32. This agreement does not bind the Board or restrict the remedies available to it concerning any other violation of Chapter 334, RSMo, by the Licensee not specifically mentioned in this document.


33. The Licensee hereby waives and releases the Board, its members, and any of its employees, agents, or attorneys, including any former Board members, employees, agents, and attorneys, of, or from, any liability, claim, actions, causes of action, fees, costs and expenses, and compensation, including, but not limited to any claims for attorneys fees and expenses, including any claims pursuant to §536.087, RSMo, or any claim arising under 42 USC 1983, which may be based upon, arise out of, or relate to any of the matters raised in this agreement, or from the negotiation or execution of this agreement. The parties acknowledge that this paragraph is

severable from the remaining portions of this agreement in that it survives in perpetuity even in the event that any court of law deems this agreement or any portion thereof void or unenforceable.


**LICENSEE**

  
Michael S. Insler, M.D. 7/7/10  
date

**BOARD**

  
Tina Steinman 7/9/10  
date

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Attorney for Licensee

  
Glenn E. Bradford, MO # 27396  
Nancy L. Skinner, MO # 62247  
GLENN E. BRADFORD & ASSOCIATES, P.C.  
The Palace Building  
1150 Grand Avenue, Suite 230  
Kansas City, Missouri 64106  
(816) 283-0400 Fax (816) 283-0820

**Attorneys for the State Board of  
Registration for the Healing Arts**

EFFECTIVE THIS 9 DAY OF July, 2010.